

Application No.: 10/804260
Docket No.: SO0024USNA

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REMARKS

Claims 1-47 are pending. Claims 1-47 are rejected. Claim 1 is amended to correct a typographical error, and recite the proper glass transition temperature as supported on page 2, line 28 of the specification.

Claims 1-47 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-47 of co-pending Application No. 10/545,828. As of preparing this response, Application No. 10/545,828 is no longer co-pending, and therefore, the double patenting rejection is now moot. Accordingly, withdrawal of the rejection is requested.

Claims 1-47 are provisionally rejected on the ground of non-statutory obviousness-type double patenting, as being unpatentable over claims 1-36 of co-pending Application No. 10/804,259. Applicants agree that the conflicting claims have not been patented, and therefore the rejection is made provisionally. Applicants add that none of the claims in co-pending 10/804,259 or the present case have been found allowable. If and when the rejection is made on a non-provisional basis, Applicants will address the Examiner's rejection.

Claims 1-47 are also rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,975,514 ('514) (Sormani et al.) The Examiner states that the conflicting claims are so close in scope that it would have been obvious to the ordinary skilled artisan at the time of the instant invention to perform the instantly claimed inventions from the claimed invention of the co-pending Application.

This is Applicants' bona fide attempt to respond to the present Office Action and advance prosecution. However, Applicants understand the rejection to be based upon an issued patent, rather than a co-pending application. Accordingly, Applicants are confused by the Examiner's statements and request clarity on the inconsistent statements made in the rejection.

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The Examiner states that claims 1-47 are directed to the same invention as that of commonly assigned 10/545,828, advising that the issue of priority under 35 U.S.C. 102(g) and possible 35 U.S.C. 102(f) of this single invention must be resolved. Applicants have expressly abandoned co-pending, commonly assigned patent application 10/545,828. Accordingly, the requirement for the assignee to state which entity is the prior inventor of the conflicting subject matter, is now moot. Accordingly, a holding of abandonment of this application should not occur.

Further, the Examiner rejects claims 1-47 under U.S.C. 102(f) as stating that the applicant did not invent the subject matter, stating that application 10/545828 lists only Hari Sunkara as the inventor of the same invention as the instant claims. Applicants respectfully disagree with the Examiner's allegation. A declaration was filed wherein receipt was acknowledged by a postcard date stamped by the USPTO on 17 August 2005 by "JC02 PCT/PTO" indicates that the following persons are named inventors in 10/545828: Hari Babu Sunkara; Patricia Mary Ellen Sormani; James William O'Neil; and Joseph V. Kurian, pursuant." Therefore, Applicants' records do not support the Examiner's statement. Further, Applicants note that the same inventors executed Declarations and are named in the Application Data Sheets submitted for the present application. Accordingly, Applicants believe that the rejection under 35 U.S.C.102(f) is improper. Withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing, reconsideration of the rejections and allowance of pending claims 1-47 is requested. If anything further is needed to advance prosecution of the present application, the Examiner is invited to contact Applicants' attorney at the telephone number provided below.

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Dated: July 6, 2006

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